IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WP(C).No. 3896 of 2007(L)

PETITIONER:

C.P.HAMZA,
SUB ENGINEER TRANSMISSION CONSTRUCTION SECTION,
KATIKAVU.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:
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1. KERALA STATE ELECTRICITY BOARD,
REPRESENTED BY ITS SECRETARY,
VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER (HRM),
VYDYUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.

3. THE EXECUTIVE ENGINEER,
TRANSMISSION CIRCLE, MALAPPURAM.

BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P (C) No. 3896 of 2007

Dated this the 29th October, 2007

J U D G M E N T

The petitioner while working as Assistant Engineer in the K.S.E.Bwas served with memo of charges dated 20.6.1995 alleging that he had effected an unauthorised service connection of a domestic line overlooking priority. Pursuant to the enquiry a major penalty of reduction in rank for two years from the post of Assistant Engineer was ordered as per Exhibit-P1 order dated 1.8.2003. The same was confirmed by the Chief Engineer, who further ordered recovery of an amount of Rs.1,157/- with interest at 24% per annum as per Exhibit-P2 order . Petitioner preferred a revision before the Chairman, who confirmed the orders of punishment imposed by the Authority as per Exhibit-P3 order dated 5.9.2005. Thereafter, the Executive Engineer passed an order reverting the petitioner to the post of Sub Engineer with effect from 1.3.2006 and further ordered that an amount of Rs.1,157/- with interest at 24% per annum shall be recovered from the petitioner's salary.

2. In the meanwhile, petitioner preferred an appeal before the Full Board. As per Exhibit-P5 order, the Board upheld the punishment of reduction in rank for two years and interest on the said amount of penalty. Petitioner retired from service on 30.6.2007.

Petitioner is aggrieved by the fact that the punishment of reduction in rank as per Exhibit-P1 order which is apparently for a period of two years has in fact been given effect to by the Asst. Engineer as per Exhibit-P4 order with effect from 1.3.2006. In effect the petitioner will be treated as Sub Engineer till 1.3.2008 irrespective of the fact that he had already retired from service on 30.6.2007.

3. Learned counsel for the petitioner contends that when the appellate authority or revisional authority only confirmed the punishment imposed by the original Authority, the reduction in rank from that of a Assistant Engineer to Sub Engineer must be given effect to from the date of Exhibit-P1 order. In so far as the punishment in rank for a period of two years is concerned the appellate or the revisional authority did not interfere with the same. Consequently the reduction in rank must be given effect to from the date of the said order. What happened in the present case is that the period of two years, in the lower post, which the petitioner is called upon to occupy consequent upon Exhibit-P4 order, is extended up to the age of retirement. This is unfair. It is unfair because Exhibit-P4 goes beyond the order of

punishment as per Exhibi-P1.

4. In the counter affidavit/statement filed by the Board it is contended that when the petitioner filed an appeal before the Chief Engineer (HRM), it ultimately led to Exhibits P2 and P3 orders. He had also requested for keeping in abeyance the implementation of punishment imposed on him. Reference is made to Exhibit R2 (a) which reads as follows:

> "As per letter No.GB/Disc/2005-06/603 dated 17.6.2005 I have submitted an appeal petition to the Chairman K.S.E. Board, Thiruvananthapuram for reconsidering the punishment imposed against me vide Order No.EBVS-7/62/03 dated Thiruvananthapuram -05-2005 of Chief Engineer (HRM) Thiruvananthapuram. Hence the order may not be implemented until further orders from the appellate authority."

5. Learned counsel for the petitioner submits that firstly there was no order as such keeping in abeyance the imposition of punishment, passed either by the appellate authority or by the Full Board. Consequently, the submission made by him under Exhibit R2 (a) relates only to the punishment imposed on the petitioner by the Chief Engineer (HRM). As noted above, the punishment was only for a period of two years as per Exhibit-P1 order and though the petitioner preferred an appeal against the

same, appellate Authority not only confirmed the punishment of reduction in rank but also required the petitioner to pay an amount of Rs.1,157/- with interest at the rate of 24% from 20.6.1995. In other words, there was no hindrance to the commencement of punishment by any order of the appellate authority while considering the appeal filed by the delinquent official against the punishment imposed on him.

6. There seems to be no material on record to indicate that the punishment imposed under Exhibit-P1 was actually kept in abeyance till the passing of Exhibit-P4. Consequently, punishment of reduction in rank imposed under Exhibit-P1 must be treated to have come into force from the date of Exhibit-P1. The statement filed by the petitioner as per Exhibit R2 (a) seems to be relatable only to the punishment imposed by the Chief Engineer. I also note that there is nothing on record to show that the petitioner has sought for a stay of the punishment imposed under Exhibit-P1 in the appeal before the Chief Engineer.

7. As noted above, the petitioner has retired from service on 30.6.2007. If the punishment imposed under Exhibit-P1 has

come into effect from the date of Exhibit -P1, what is required is only to treat the petitioner as having undergone the punishment of reduction in rank for a period of two years commencing from the day following Exhibit-P1. If after the expiry of the two year period, there was a vacancy in the post of Assistant Engineer, petitioner is entitled to be accommodated against such vacancy with effect from the day following the expiry of Exhibit-P1. Suitable amendments may have to be made in this regard.

The writ petition is allowed in part. Exhibit P4 order is set aside to the extent of holding that punishment of reduction in rank be treated as operative from 1.3.2006 for a period of two years. Punishment under Exhibit-P1 by way of reduction in rank shall be given effect to for a period of two years from the day following the expiry of Exhibit-P1 and suitable modified orders may be passed in this regard by the 2nd respondent, within a period of three months from the date of receipt of a copy of this judgment.

(V.GIRI, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007